

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

USCA Docket Number:

USDC Docket Number : 04-cv-10160

Charles J. Senior, et al

v.

Nstar Electric and Gas Corporation, et al

CLERK'S CERTIFICATE

I, Sarah A. Thornton, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed documents as indicated on the certified copy of the docket and contained in Volume(s) I & II are the original pleadings and constitute the record on appeal in the above entitled case for the Notice of Appeal filed on 6/17/05.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on July 5, 2005.

Sarah A Thornton, Clerk of Court

By: 

Jeanette Ramos, Deputy Clerk

Receipt of the documents in the above entitled case is hereby acknowledged this date: 7/6/05.


Deputy Clerk, US Court of Appeals

Please complete the following information:

COURT OF APPEALS DOCKET NUMBER ASSIGNED: _____

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-10160-EFH**

Senior et al v. NStar Electric and Gas
Corporation et al
Assigned to: Judge Edward F. Harrington
Cause: 29:1145 E.R.I.S.A.

Date Filed: 01/23/2004
Jury Demand: Plaintiff
Nature of Suit: 791 Labor:
E.R.I.S.A.
Jurisdiction: Federal Question

Plaintiff

Charles J. Senior

represented by **Warren H. Pyle**
Pyle, Rome & Lichten, &
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Norman Fahy

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Ronald D. Phipps

represented by **Warren H. Pyle**
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LEAD ATTORNEY
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Plaintiff

Raymond W. Postma represented by **Warren H. Pyle**
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LEAD ATTORNEY
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Plaintiff

Thomas G. Hirl represented by **Warren H. Pyle**
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V.

Defendant

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Defendant

**Commonwealth Gas
 Company**

represented by **Keith B. Muntyan**
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Robert P. Morris
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Date Filed	#	Docket Text
01/23/2004	<u>1</u>	COMPLAINT against Commonwealth Gas Company, NStar Electric and Gas Corporation Filing fee: \$ 150, receipt number 53372, filed by Norman Fahy, Thomas G. Hirl, Ronald D. Phipps, Raymond W. Postma, Charles J. Senior.(Holahan, Sandra) (Entered: 01/27/2004)
01/23/2004	•	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge COLLINGS. (Holahan, Sandra) (Entered: 01/27/2004)
01/23/2004	•	Summons Issued as to Commonwealth Gas Company, NStar Electric and Gas Corporation. (Holahan, Sandra) (Entered: 01/27/2004)
02/20/2004	<u>2</u>	ANSWER to Complaint by Commonwealth Gas Company, NStar Electric and Gas Corporation. (Holahan, Sandra) (Entered: 02/25/2004)
02/20/2004	<u>3</u>	CORPORATE DISCLOSURE STATEMENT by Commonwealth Gas Company, NStar Electric and Gas

		Corporation. (Holahan, Sandra) (Entered: 02/25/2004)
03/24/2004	<u>4</u>	NOTICE of Hearing: Scheduling Conference set for 5/12/2004 02:00 PM in Courtroom 19 before Edward F. Harrington. (Holahan, Sandra) (Entered: 03/26/2004)
05/05/2004	<u>5</u>	ASSENTED MOTION to Continue scheduling conference to 6/1/2004 or 6/4/2004 by Charles J. Senior.(Holahan, Sandra) (Entered: 05/06/2004)
05/07/2004	<u>6</u>	Judge Edward F. Harrington : ELECTRONIC ORDER entered granting <u>5</u> Motion to Continue scheduling conference. MOTION ALLOWED. cc/cl (Holahan, Sandra) (Entered: 05/07/2004)
05/07/2004	<u>6</u>	REVISED NOTICE of Scheduling Conference Scheduling Conference RESET for 6/1/2004 02:00 PM in Courtroom 19 before Edward F. Harrington. cc/cl(Holahan, Sandra) (Entered: 05/07/2004)
05/26/2004	<u>7</u>	JOINT STATEMENT re scheduling conference. (Holahan, Sandra) (Entered: 05/27/2004)
05/26/2004	<u>8</u>	CERTIFICATION pursuant to Local Rule 16.1 by Commonwealth Gas Company, Ronald D. Phipps. (Holahan, Sandra) (Entered: 05/27/2004)
06/01/2004	<u>9</u>	ELECTRONIC Clerk's Notes for proceedings held before Judge Edward F. Harrington : Scheduling Conference held on 6/1/2004. Both counsel appear for conference; Defendant to file motion for summary judgment in 90 days; Plaintiff will respond thereafter; Plaintiff's counsel files certification in open court; (Court Reporter none.) (Holahan, Sandra) (Entered: 06/01/2004)
06/01/2004	<u>9</u>	CERTIFICATION pursuant to Local Rule 16.1 by Norman Fahy, Thomas G. Hirl, Ronald D. Phipps, Raymond W. Postma, Charles J. Senior.(Holahan, Sandra) (Entered: 06/01/2004)

06/01/2004	•10	Judge Edward F. Harrington : ORDER entered re: Scheduling conference on 6/1/2004. SO ORDERED. cc/cl(Holahan, Sandra) (Entered: 06/02/2004)
08/09/2004	•11	JOINT MOTION to Continue discovery and other case deadlines to 11/1/2004 by Commonwealth Gas Company, Norman Fahy, Thomas G. Hirl, NStar Electric and Gas Corporation, Ronald D. Phipps, Raymond W. Postma, Charles J. Senior.(Holahan, Sandra) (Entered: 08/11/2004)
08/12/2004	•	Judge Edward F. Harrington : ELECTRONIC ORDER entered granting 11 Motion to Continue discovery and other case deadlines. MOTION ALLOWED. cc/cl (Holahan, Sandra) (Entered: 08/12/2004)
10/08/2004	•12	Joint MOTION for Extension of Time to 11/15/04 to Complete Discovery <i>and File Summary Judgment</i> by NStar Electric and Gas Corporation.(Morris, Robert) (Entered: 10/08/2004)
10/12/2004	•	Judge Edward F. Harrington : ELECTRONIC ORDER entered granting 12 Motion for Extension of Time to Complete Discovery Discovery and filing dispositive motions continued to 11/15/2004. (Holahan, Sandra) (Entered: 10/12/2004)
10/21/2004	•14	JOINT MOTION for Extension of Time to 1/14/2005 to complete discovery and file dispositive motions by Commonwealth Gas Company, Norman Fahy, Thomas G. Hirl, NStar Electric and Gas Corporation, Ronald D. Phipps, Raymond W. Postma, Charles J. Senior.(Holahan, Sandra) (Entered: 10/26/2004)
10/21/2004	•	Judge Edward F. Harrington : ELECTRONIC ORDER entered granting 14 Motion for Extension of Time. MOTION ALLOWED. cc/cl (Holahan, Sandra) (Entered: 10/26/2004)
10/22/2004	•13	Assented to MOTION to Amend 1 Complaint by Ronald D. Phipps, Raymond W. Postma, Charles J.

		Senior.(Pyle, Warren) (Entered: 10/22/2004)
10/28/2004	•	Judge Edward F. Harrington : ELECTRONIC ORDER entered granting <u>13</u> Motion to Amend complaint. MOTION ALLOWED. cc/cl (Holahan, Sandra) (Entered: 10/28/2004)
12/17/2004	• <u>15</u>	JOINT MOTION for Extension of Time to 1/14/2005 for completing discovery and 2/11/2005 for filing dispositive motions by Norman Fahy, Thomas G. Hirl, Ronald D. Phipps, Raymond W. Postma, Charles J. Senior.(Holahan, Sandra) (Entered: 12/22/2004)
12/20/2004	• <u>16</u>	NOTICE of Change of Address by Robert P. Morris, Keith B. Muntyan (Holahan, Sandra) (Entered: 12/23/2004)
12/30/2004	•	Judge Edward F. Harrington : ElectronicORDER entered granting <u>15</u> Motion for Extension of Time. MOTION ALLOWED. cc/cl (Holahan, Sandra) (Entered: 01/03/2005)
01/21/2005	• <u>17</u>	Second MOTION to Amend <u>1</u> Complaint (<i>Assented</i>) by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps.(Pyle, Warren) (Entered: 01/21/2005)
01/27/2005	•	Judge Edward F. Harrington : Electronic ORDER entered granting <u>17</u> Motion to Amend. MOTION ALLOWED. cc/cl (Holahan, Sandra) (Entered: 02/09/2005)
02/07/2005	• <u>18</u>	STIPULATION (<i>Joint Motion</i>) for extension of time to file summary judgment motions by Commonwealth Gas Company. (Morris, Robert) (Entered: 02/07/2005)
02/08/2005	•	Judge Edward F. Harrington : Electronic ORDER entered. ELECTRONIC ENDORSEMENT re <u>18</u> Stipulation filed by Commonwealth Gas Company. MOTION ALLOWED. cc/cl(Holahan, Sandra) (Entered: 02/08/2005)

02/11/2005	<u>19</u>	AMENDED COMPLAINT (<i>Second</i>) against all defendants, filed by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps.(Pyle, Warren) (Entered: 02/11/2005)
02/17/2005	<u>20</u>	<i>Defendants'</i> ANSWER to Amended Complaint (<i>Second</i>) by NStar Electric and Gas Corporation. (Morris, Robert) (Entered: 02/17/2005)
03/04/2005	<u>21</u>	MOTION for Summary Judgment by NStar Electric and Gas Corporation, Commonwealth Gas Company. (Holahan, Sandra) (Entered: 03/07/2005)
03/04/2005	<u>22</u>	MEMORANDUM in Support re <u>21</u> MOTION for Summary Judgment filed by NStar Electric and Gas Corporation, Commonwealth Gas Company. (Holahan, Sandra) (Entered: 03/07/2005)
03/04/2005	<u>23</u>	STATEMENT of undisputed material facts submitted by Nstar Electric and Gas Corporation and Commonwealth Gas Company. (Holahan, Sandra) (Entered: 03/07/2005)
03/04/2005	<u>24</u>	MOTION to prohibit use of expert witness (Carol Chandor) and strike expert report, and in alternative for leave to conduct deposition by NStar Electric and Gas Corporation, Commonwealth Gas Company. (Holahan, Sandra) (Entered: 03/07/2005)
03/04/2005	<u>25</u>	MEMORANDUM in Support re <u>24</u> MOTION to prohibit use of expert witness (Carol Chandor) and strike expert report, and in alternative for leave to conduct deposition filed by NStar Electric and Gas Corporation, Commonwealth Gas Company. (Holahan, Sandra) (Entered: 03/07/2005)
03/04/2005	<u>26</u>	MOTION for Summary Judgment by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps.(Holahan, Sandra) (Entered: 03/07/2005)

03/04/2005	<u>27</u>	MEMORANDUM in Support re <u>26</u> MOTION for Summary Judgment filed by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps. (Attachments: # <u>1</u> Part 2)(Holahan, Sandra) (Entered: 03/07/2005)
03/04/2005	<u>28</u>	Plaintiff's STATEMENT of undisputed facts. (Holahan, Sandra) (Entered: 03/07/2005)
03/04/2005	<u>29</u>	Attachments to Plaintiffs' statement of undisputed facts (Attachments: # <u>1</u> Exhibit 1-25 (NOT SCANNED)) (Holahan, Sandra) (Entered: 03/07/2005)
03/08/2005	<u>30</u>	Joint MOTION for Extension of Time to 4/5/05 to File Response/Reply as to <u>21</u> MOTION for Summary Judgment, <u>24</u> MOTION to prohibit use of expert witness (Carol Chandor) and strike expert report, and in alternative for leave to conduct deposition, <u>26</u> MOTION for Summary Judgment by Commonwealth Gas Company.(Morris, Robert) (Entered: 03/08/2005)
03/09/2005	•	Judge Edward F. Harrington : Electronic ORDER entered granting <u>30</u> Motion for Extension of Time to File Response re <u>26</u> MOTION for Summary Judgment, <u>21</u> MOTION for Summary Judgment Responses due by 4/5/2005 (Holahan, Sandra) (Entered: 03/10/2005)
04/04/2005	<u>31</u>	Joint MOTION for Extension of Time to April 8, 2005 to To Continue Date for Filing Oppositions to Summary Judgment Motions by Raymond W. Postma, Thomas G. Hirl, NStar Electric and Gas Corporation, Commonwealth Gas Company, Charles J. Senior, Norman Fahy, Ronald D. Phipps.(Pyle, Warren) (Entered: 04/04/2005)
04/05/2005	•	Judge Edward F. Harrington : Electronic ORDER entered granting <u>31</u> Motion for Extension of Time. MOTION ALLOWED. cc/cl (Holahan, Sandra)

		(Entered: 04/05/2005)
04/08/2005	<u>32</u>	MEMORANDUM in Opposition re <u>21</u> MOTION for Summary Judgment of <i>Defendants</i> filed by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps. (Pyle, Warren) (Entered: 04/08/2005)
04/08/2005	<u>33</u>	Response by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps, <i>Pursuant to Local Rule 56.1, to Defendants' Statement of Undisputed Material Facts and Supplement to Their Statement of Undisputed Material Facts.</i> (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B) (Pyle, Warren) (Entered: 04/08/2005)
04/08/2005	<u>34</u>	Opposition re <u>24</u> MOTION to prohibit use of expert witness (Carol Chandor) and strike expert report, and in alternative for leave to conduct deposition filed by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps. (Pyle, Warren) (Entered: 04/08/2005)
04/08/2005	<u>35</u>	MOTION to Certify Class <i>es</i> by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps.(Pyle, Warren) (Entered: 04/08/2005)
04/08/2005	<u>36</u>	MEMORANDUM in Opposition re <u>26</u> MOTION for Summary Judgment filed by NStar Electric and Gas Corporation, Commonwealth Gas Company. (Holahan, Sandra) (Entered: 04/13/2005)
04/08/2005	<u>37</u>	Response by NStar Electric and Gas Corporation, Commonwealth Gas Company to <u>28</u> Statement of facts. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 5# <u>6</u> Exhibit 5A# <u>7</u> Exhibit 6# <u>8</u> Exhibit 7# <u>9</u> Exhibit 8# <u>10</u> Exhibit 9) (Holahan, Sandra) (Entered: 04/13/2005)
04/08/2005	<u>38</u>	RENEWED MOTION to prohibit use of expert

		witness (Carol Chandor) and strike expert report, and in alternative for leave to conduct deposition by NStar Electric and Gas Corporation, Commonwealth Gas Company.(Holahan, Sandra) (Entered: 04/13/2005)
04/11/2005	●	Judge Edward F. Harrington : Electronic ORDER entered granting in part and denying in part <u>24</u> Motion to prohibit use of expert witness (Carol Chandor) and strike expert report, and in alternative for leave to conduct deposition. MOTION TO PROHIBIT IS DENIED; MOTION TO DEPOSE IS ALLOWED. SO ORDERED. cc/cl (Holahan, Sandra) (Entered: 04/12/2005)
04/15/2005	● <u>39</u>	Opposition re <u>35</u> MOTION to Certify Class <i>es</i> filed by Commonwealth Gas Company. (Attachments: # <u>1</u> Exhibit Order Class Certification, L369)(Morris, Robert) (Entered: 04/15/2005)
04/29/2005	● <u>40</u>	Assented to MOTION for Leave to File <i>Reply Brief in Support of Summary Judgment Motion</i> by Commonwealth Gas Company.(Morris, Robert) (Entered: 04/29/2005)
04/29/2005	● <u>41</u>	REPLY to Response to Motion re <u>21</u> MOTION for Summary Judgment <i>of Defendants</i> filed by Commonwealth Gas Company. (Morris, Robert) (Entered: 04/29/2005)
05/02/2005	●	Judge Edward F. Harrington : Electronic ORDER entered granting <u>40</u> Motion for Leave to File reply. MOTION ALLOWED. cc/cl (Holahan, Sandra) (Entered: 05/02/2005)
05/11/2005	● <u>42</u>	REPLY to Response to Motion re <u>26</u> MOTION for Summary Judgment filed by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps. (Holahan, Sandra) (Entered: 05/16/2005)
05/31/2005	● <u>43</u>	Judge Edward F. Harrington : ORDER entered.

		MEMORANDUM AND ORDER re cross-motions for summary judgment. SO ORDERED.(Holahan, Sandra) (Entered: 06/01/2005)
05/31/2005	●	Civil Case Terminated. (Holahan, Sandra) (Entered: 06/01/2005)
06/01/2005	●	Judge Edward F. Harrington : Electronic ORDER entered finding as moot <u>35</u> Motion to Certify Class. MOTION IS MOOT. cc/cl (Holahan, Sandra) (Entered: 06/01/2005)
06/01/2005	●44	Judge Edward F. Harrington : ORDER entered. JUDGMENT in favor of Defendants against Plaintiffs (Holahan, Sandra) (Entered: 06/01/2005)
06/17/2005	●45	NOTICE OF APPEAL as to <u>43</u> Memorandum & ORDER, <u>44</u> Judgment by Raymond W. Postma, Thomas G. Hirl, Charles J. Senior, Norman Fahy, Ronald D. Phipps. \$ 255, receipt number 65123 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 7/7/2005. (Holahan, Sandra) (Entered: 06/24/2005)